

No. 16164

16165

United States  
Court of Appeals  
for the Ninth Circuit

UNITED STATES OF AMERICA,  
Appellant,  
vs.

BANK OF AMERICA NATIONAL TRUST  
& SAVINGS ASSOCIATION, Appellee.

Transcript of Record

Appeal from the United States District Court for the  
Southern District of California,  
Central Division

FILED

NOV 21 1958

PAUL P. O'BRIEN, CLERK



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,  
United States Attorney,

RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief, Civil Division,

BURTON C. JACOBSON,  
Assistant U. S. Attorney,  
600 Federal Building,  
Los Angeles 12, California.

For Appellee:

SAMUEL B. STEWART,  
HUGO A. STEINMEYER,  
GEORGE L. BECKWITH,

650 So. Spring Street,  
Los Angeles 14, California. [1]\*

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\* Page numbers appearing at bottom of page of Original Transcript of Record.





United States District Court, Southern District  
of California, Central Division

Civil No. 1956-T

UNITED STATES OF AMERICA

Plaintiff

vs.

BANK OF AMERICA OF LOS ANGELES, &

National Trust and Savings Association,

Defendant.

COMPLAINT FOR MONEY ON FORGED  
(CHECKS (TREASURY))

Comes now the United States of America, plaintiff above named, and for cause of action against the defendant above named complains and alleges as follows:

I.

That this is a suit of a civil nature commenced by the United States of America, and the Court has jurisdiction of this action by virtue of the provisions of Title 28, § 1345, United States Code.

II.

That during all times herein mentioned United States of America was and now is a corporation sovereign.

III.

That the defendant, Bank of America of Los Angeles, at [?] all times herein mentioned was and now is a national trust and savings association,



United States District Court, Southern District  
of California, Central Division

Civil No. 18658-T

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BANK OF AMERICA OF LOS ANGELES, a  
National Trust and Savings Association,  
Defendant.

COMPLAINT FOR MONEY ON FORGED  
CHECKS (TREASURY)

Comes now the United States of America, plaintiff above named, and for cause of action against the defendant above named complains and alleges as follows:

I.

That this is a suit of a civil nature, commenced by the United States of America, and this Court has jurisdiction of this action by virtue of the provisions of Title 28, § 1345, United States Code.

II.

That during all times herein mentioned United States of America was and now is a corporation sovereign.

III.

That the defendant, Bank of America of Los Angeles, at [2] all times herein mentioned was and now is a national trust and savings association,

transacting business in the County of Los Angeles, State of California.

#### IV.

That all of the transactions herein involved occurred in the County of Los Angeles, in the State and Southern District of California, and within the jurisdiction of this Court.

#### V.

That the defendant above named is indebted to the plaintiff in the sums hereinafter set forth, with interest thereon at the rate of six per cent per annum from the dates hereinafter set forth opposite said sums:

\$158.26	4- 7-49	\$120.95	3-28-49
265.25	3-18-49	220.45	3-16-49
225.10	3-16-49	150.05	4-23-49
201.02	3-21-49		

upon a written contract of guarantee and for money paid by mistake under the following circumstances:

#### VI.

That on the dates hereinafter set forth checks were drawn on the 'Treasurer of the United States by A. H. Hoiland and H. Rogers, Regional Disbursing Officers, Symbols 412 and 415, respectively, U. S. Treasury Department, payable to the order of the payees hereinafter listed, photostatic copies of which checks are annexed hereto and marked "Exhibit A" and made a part hereof by reference; that the following list sets forth the check number,

the date of issuance, the amount, symbol and name of payee: [3]

Check No.	Date	Amount	Symbol	Payee
10,434,518	3-18-49	\$158.26	412	Jessie C. Cross
10,997,314	3- 7-49	265.25	415	Leonard J. Day
10,976,154	3- 4-49	225.10	415	Charles T. Elbert
11,046,795	3-10-49	201.02	415	Joseph R. Hubbard
11,115,264	3-16-49	120.95	415	Stephen K. Lannode
10,303,674	3- 4-49	220.45	412	John E. Lewis
10,259,475	3-22-49	150.05	415	L.G. & R.Y. Valentine

## VII.

That on the dates listed in paragraph V above the defendant, Bank of America of Los Angeles, N.T.& S.A., presented said checks to the plaintiff, through the Los Angeles Branch of the Federal Reserve Bank of San Francisco, fiscal agent of the Treasurer of the United States, with the names of the payees listed in paragraph VI above written upon the backs thereof, and with the endorsements thereon of the defendant, Bank of America of Los Angeles, N.T.& S.A., in the manner and words and figures as shown on the reverse side of said "Exhibit A", said defendant's aforesaid endorsement, including the words "Prior Endorsements Guaranteed".

## VIII.

That thereupon the plaintiff, through the said Federal Reserve Bank of San Francisco, relying upon the said guarantees by the defendant, Bank of America of Los Angeles, N.T.& S.A., that the names written upon the backs of said check were the genuine signatures and endorsements of the payees, and relying upon the representation by the

said defendant that it had valid title to said checks, paid the amounts thereof to the defendant, Bank of America of Los Angeles, N.T.& S.A.

### IX.

That the said names of the payees set forth in paragraph VI above were the names of fictitious and nonexistent persons; that the plaintiff had no knowledge of the foregoing either at the time the aforesaid checks were issued or at the time plaintiff paid the amount thereof to the defendant, as aforesaid. [4]

### X.

That the names of the said payees endorsed upon the aforesaid checks were forged and had been wrongfully and fraudulently written upon the same by persons other than the named payees who were fictitious and nonexistent persons, as aforesaid.

### XI.

That the payments of said checks paid by the plaintiff to the defendant as described in paragraph VIII of this complaint were made under a mistake of fact and without knowledge that the signatures of the said payees thereon had been forged upon the back of said checks, and that the said payees were fictitious and nonexistent persons.

### XII.

That the names of the payees written upon the backs of said checks were not the genuine signatures and endorsements of payees named upon the face of said checks, nor did said defendant receive



said checks from the payees thereon named; in truth and in fact the purported endorsements were forgeries and the defendant, Bank of America of Los Angeles, N.T.& S.A., when it presented said checks and received payment of the amounts thereof, as aforesaid, had no valid or legal title to said checks.

### XIII.

That upon discovery of the aforesaid forgeries and the want of title of the defendant, Bank of America of Los Angeles, N.T.& S.A., the plaintiff, through the said Federal Reserve Bank of San Francisco, gave notice thereof to the said defendant and demanded the return of the sums paid to said defendant upon said checks, but the said defendant refused to repay to the plaintiff the said sums or any part thereof.

### XIV.

That prior to the commencement of this action, the plaintiff demanded from said defendant the sums above mentioned, but the said defendant has failed, neglected and refused, and [5] still fails, neglects and refuses, to repay to the plaintiff the said sums or any part thereof. The whole thereof in the amounts listed in paragraphs V and VI, together with interest thereon at the rate of six per cent per annum from the dates set forth in paragraph V of this complaint, is now due, owing and unpaid to the plaintiff from the defendant.

Wherefore, plaintiff prays judgment against the defendant, Bank of America of Los Angeles, N.T.

& S.A., in the sum of \$1,341.08, together with interest thereon at the rate of six per cent per annum, and for its costs incurred herein, and for such other and further relief as to this Honorable Court may seem meet, just and proper in the premises.

LAUGHLIN E. WATERS,  
United States Attorney,

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief of Civil Division,

EDWIN H. ARMSTRONG,  
Assistant U. S. Attorney,

/s/ EDWIN H. ARMSTRONG,  
Attorneys for Plaintiff. [6]



12

1-14 10,303,674

THE UNITED STATES OF AMERICA

THROUGH FEDERAL RESERVE BANK OF SAN FRANCISCO

PAY TO THE ORDER OF JOHN E. LEWIS

603 E JEFFERSON BLVD

LOS ANGELES 11 CALIF

PAID 1

16 MAR 9

176 FEDERAL DISBURSING OFFICE

DO NOT FOLD, SPINDLE OR MUTILATE

KNOW YOUR ENDORSER - - REQUIRE IDENTIFICATION

412

The payee should endorse below in ink or indelible pencil.

If the endorsement is made by mark (X) it must be witnessed by two persons who can write, giving their places of residence in full.

It is suggested that this check be promptly cashed.

John E. Lewis

Witty Mary Jennings

MAR 6 1949

OF AMERICA N.T. & S.A.

LOS ANGELES 11 CALIF

45



[Title of District Court and Cause.]

## ANSWER OF DEFENDANT

Comes Now the Defendant Bank of America National Trust and Savings Association and in answer to the complaint on file herein, admits, denies and alleges as follows:

### I.

In answer to Paragraph V, defendant denies generally and specifically each and every allegation therein contained. Defendant denies that it is indebted to plaintiff in any sum whatsoever.

### II.

Denies generally and specifically each and every allegation contained in Paragraph VIII except that defendant admits that the amounts of said checks were paid to this defendant. [10]

### III.

That defendant is without information or belief sufficient to enable it to answer and on that ground, denies generally and specifically each and every allegation contained in Paragraphs IX, X, XI and XII.

### IV.

Denies generally and specifically each and every allegation contained in Paragraph XIII except that defendant admits that plaintiff demanded the return of the sums paid and that defendant refuses to pay same.

### V.

In answer to Paragraph XIV, defendant denies

that any sum whatsoever is due and owing from this defendant to plaintiff.

For a First Affirmative Defense, Defendant Alleges:

### I.

That plaintiff is estopped to assert any claim against this defendant arising out of the payment by plaintiff to defendant of the amounts of said checks referred to in plaintiff's complaint.

### II.

That the facts and circumstances out of which said estoppel arise are as follows:

### III.

That the defendant is informed and believes and on such information and belief alleges that a person or persons whose name is or names are unknown to this defendant filed fraudulent and false tax returns or fraudulent and false claims for tax refunds in the fictitious names of the persons named as payees in the checks described in plaintiff's complaint. That thereafter the Treasury Department negligently and without any investigation whatsoever into the genuineness or bona fides of said [11] returns or claims issued said checks in the names of the payees as set forth in plaintiff's complaint which names were the same as those in the respective false returns or claims. That the negligence of the Treasury Department in issuing said checks was and is the proximate cause of any damage suffered by plaintiff.

For a Second Affirmative Defense, Defendant Alleges:

I.

That defendant is informed and believes and on such information and belief alleges that a person or persons whose name is or names are unknown to this defendant filed tax returns or claims for refunds under the aliases and in the names of various fictitious and non-existing persons as an impostor or impostors. That the names under which said returns or claims were filed are the names set forth in plaintiff's complaint as the names of the payees on the checks issued by the Treasury Department. That said checks referred to in plaintiff's complaint were issued by the Treasury Department to the person or persons filing said returns or claims under the aliases or fictitious names used by said person or persons filing said returns or claims and that the person or persons under the aliases or fictitious names as an impostor or impostors was or were the person or persons intended by the Treasury Department to receive said checks and that said person or persons did receive said checks and did endorse said checks under the aliases or fictitious names and that said endorsements are not forgeries.

For a Third Affirmative Defense, Defendant Alleges:

I.

That the facts alleged in the complaint on file herein occurred during the months of March and April, 1949. That the [12] complaint on file herein

was filed on the 25th day of August, 1955. That, therefore, said action and the whole thereof is barred by the provisions of Title 31, United States Codes, Section 129.

For a Fourth Affirmative Defense, Defendant Alleges:

I.

That said action and the whole thereof is barred by the laches of plaintiff.

Dated this 16th day of November, 1955.

HUGO A. STEINMEYER and

GEO. L. BECKWITH,

/s/ By GEO. L. BECKWITH,

Attorneys for Defendant. [13]

Affidavit of Service by Mail Attached. [14]

[Endorsed]: Filed November 16, 1955.

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[Title of District Court and Cause.]

STIPULATION OF FACTS AND ORDER

It Is Hereby Stipulated, subject to approval of the Court, by and between Laughlin E. Waters, United States Attorney, Richard A. Lavine and Burton C. Jacobson, Assistant United States Attorneys, counsel for plaintiff, and Hugo A. Steinmeyer and Geo. L. Beckwith, attorneys for defendant, that the following facts are admitted:

I.

On the dates hereinafter set forth, the following



checks were drawn on the Treasurer of the United States by A. H. Hoiland and H. Rogers, Regional Disbursing Officers, symbols 412 and 415: [15]

Check No.	Date	Amount	Symbol	Payee
10,434,518	3-13-49	\$158.26	412	Jessie C. Cross
10,997,314	3- 7-49	265.25	415	Leonard J. Day
10,976,154	3- 4-49	225.10	415	Charles T. Elbert
11,046,795	3-10-49	201.02	415	Joseph R. Hubbard
11,115,264	3-16-49	120.95	415	Stephen K. Lannode
10,303,674	3- 4-49	220.45	412	John E. Lewis
10,259,475	3-22-49	150.05	415	L.G. & R.Y. Valentine

Photostatic copies of said checks are annexed to plaintiff's complaint and are by reference made a part hereof.

## II.

Said checks were presented and paid as alleged in Paragraph VII of plaintiff's complaint.

## III.

Prior to the issuance of said checks, one or more persons unknown to both plaintiff and defendant by using the names Jessie C. Cross, Leonard J. Day, Charles T. Elbert, Joseph R. Hubbard, Stephen K. Lannode, John E. Lewis and L. G. & R. Y. Valentine filed with plaintiff income tax returns in each of the said names showing overpayments of income tax as follows:

Name Inserted in Return	Amount Claimed as Overpayment
Jessie C. Cross	\$158.26
Leonard J. Day	265.25
Charles T. Elbert	225.10
Joseph R. Hubbard	201.02
Stephen K. Lannode	120.95
John E. Lewis	220.45
L. G. & R. Y. Valentine	150.05

## IV.

Upon receipt of said returns and without first checking its records to ascertain whether the taxes claimed in said returns to have been paid to plaintiff had in fact been paid, and relying upon said returns which were false and fraudulent, plaintiff [16] issued the seven checks described in its complaint.

## V.

After said checks were issued, plaintiff caused the same to be mailed to the respective payees at the addresses of said payees as set out in said returns.

## VI.

Each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was issued. Said checks were then negotiated through various channels and in the course of business were deposited in defendant bank; in due course the bank endorsed said checks "All prior endorsements guaranteed" and presented them for payment, and they were paid by the government's fiscal agent.

## VII.

Upon discovery that a fraud had been committed, on or about October 14, 1949, and January 11, 1950, plaintiff gave notice to defendant and demanded the return of the amount of said checks. Defendant refused to comply with such demand.

## VIII.

There are no pertinent facts other than those



above mentioned, pertaining to the issuance, negotiation and payment of the checks involved herein except facts admitted in the pleadings, and both plaintiff and defendant agree that a trial as to the facts is not necessary and that the Court may consider this matter as if the same had been tried and all of the above-stated facts had been found to be true.

IX.

It is agreed that this cause may be submitted to the Court for decision upon this stipulation. [17]

Dated: This 12th day of May, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,

RICHARD A. LAVINE,  
Assistant U. S. Attorney,

/s/ BURTON C. JACOBSON,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff.

HUGO A. STEINMEYER and  
GEO. L. BECKWITH,

/s/ By GEO. L. BECKWITH,  
Attorneys for Defendant.

It is so ordered this 12th day of May, 1958.

/s/ WM. M. BYRNE,  
United States District Judge. [18]

[Endorsed]: Filed May 12, 1958.

United States District Court, Southern District  
of California, Central Division

Civil No. 18658-WB

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, a national  
banking association, Defendant.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT FOR THE DE-  
FENDANT

The above-entitled matter came on regularly for pre-trial hearing on the 12th day of May, 1958, before The Honorable Wm. M. Byrne, Judge Presiding, and the plaintiff having appeared and been represented by counsel Laughlin E. Waters, United States Attorney, Richard A. Lavine, Assistant United States Attorney, and Burton C. Jacobson, Assistant United States Attorney, by Burton C. Jacobson, and the defendant having appeared and been represented by counsel Hugo A. Steinmeyer and Geo. L. Beckwith, by Geo. L. Beckwith, and the parties having, by and through their respective counsel, in writing, stipulated to the facts and said stipulation of the facts having been filed in and made a part of the record in the above-entitled matter, and the matter having been submitted with-

out further trial, the Court now, therefore, makes the following findings of fact: [19]

### I.

On the dates hereinafter set forth, the following checks were drawn on the Treasurer of the United States by A. H. Hoiland and H. Rogers, Regional Disbursing Officers, symbols 412 and 415:

Check No.	Date	Amount	Symbol	Payee
10,434,518	3-18-49	\$158.26	412	Jessie C. Cross
10,997,314	3- 7-49	265.25	415	Leonard J. Day
10,976,154	3- 4-49	225.10	415	Charles T. Elbert
11,046,795	3-10-49	201.02	415	Joseph R. Hubbard
11,115,264	3-16-49	120.95	415	Stephen K. Lannode
10,303,674	3- 4-49	220.45	412	John E. Lewis
10,259,475	3-22-49	150.05	415	L.G. & R.Y. Valentine

### II.

That on the dates listed in Paragraph I above, the defendant Bank of America National Trust and Savings Association presented said checks to the plaintiff through the Los Angeles Branch of the Federal Reserve Bank of San Francisco, fiscal agent of the Treasurer of the United States, with the names of the payees listed in Paragraph I above written upon the backs thereof and with the endorsements thereon of the defendant Bank of America National Trust and Savings Association, said defendant's endorsement including the words "Prior endorsements guaranteed."

### III.

Prior to the issuance of said checks, one or more persons unknown to both plaintiff and defendant,

by using the names Jessie C. Cross, Leonard J. Day, Charles T. Elbert, Joseph R. Hubbard, Stephen K. Lannode, John E. Lewis and L. G. & R. Y. Valentine, filed with plaintiff income tax returns in each of the said names showing overpayments of income tax as follows: [20]

Name Inserted in Return	Amount Claimed as Overpayment
Jessie C. Cross	\$158.26
Leonard J. Day	265.25
Charles T. Elbert	225.10
Joseph R. Hubbard	201.02
Stephen K. Lannode	120.95
John E. Lewis	220.45
L. G. & R. Y. Valentine	150.05

#### IV.

Upon receipt of said returns and without first checking its records to ascertain whether the taxes claimed in said returns to have been paid to plaintiff had in fact been paid, and relying upon said returns which were false and fraudulent, plaintiff issued the seven checks described in its complaint.

#### V.

After said checks were issued, plaintiff caused the same to be mailed to the respective payees at the addresses of said payees as set out in said returns.

#### VI.

Each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was issued. Said checks were then negotiated through various channels and in the course of business were deposited

in defendant bank; in due course the bank endorsed said checks "All prior endorsements guaranteed" and presented them for payment, and they were paid by the government's fiscal agent.

## VII.

Upon discovery that a fraud had been committed, on or about October 14, 1949, and January 11, 1950, plaintiff gave notice to defendant and demanded the return of the amount of said checks. Defendant refused to comply with such demand.

From the foregoing findings of fact, the Court makes the following conclusions of law:

### I.

That the doctrine of the "Impostor Rule" is applicable in this case and the endorsements of the payees' names on said checks are not forgeries and that the plaintiff United States of America is not entitled to judgment and judgment should be entered for the defendant Bank of America National Trust and Savings Association.

In accordance with the foregoing findings of fact and conclusions of law, It Is Hereby Ordered, Adjudged and Decreed that judgment be entered for the defendant Bank of America National Trust and Savings Association.

It is so ordered.

Dated this 3rd day of June, 1958.

/s/ WM. M. BYRNE,  
Judge.

Approved as to form.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
BURTON C. JACOBSON,  
Assistant U. S. Attorney,  
/s/ By BURTON C. JACOBSON.

Dated this 2nd day of June, 1958. [22]

[Endorsed]: Filed and Entered June 3, 1958.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the United States of America, the plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 3, 1958.

Dated at Los Angeles, California, this 25th day of July, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief, Civil Division,  
/s/ BURTON C. JACOBSON,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff. [23]

Affidavit of Service by Mail Attached. [24]

[Endorsed]: Filed July 25, 1958.



[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 27, inclusive, containing the original:

Complaint.

Answer.

Stipulation of Facts and Order.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has not been paid by appellant.

Dated: August 27, 1958.

[Seal]                      JOHN A. CHILDRESS,

Clerk,

/s/ By WM. A. WHITE,

Deputy Clerk.

[Endorsed]: No. 16164. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Bank of America National Trust & Savings Association, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed and Docketed: August 28, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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United States Court of Appeals  
for the Ninth Circuit

CA No. 16164

UNITED STATES OF AMERICA,  
Appellant,  
vs.

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, a national  
banking association, Appellee.

APPELLANT'S STATEMENT OF POINTS ON  
APPEAL AND DESIGNATION OF REC-  
ORD TO BE PRINTED

The appellant hereby designates the following  
Points on Appeal in the above-entitled matter:

1. The district court erred in holding that de-



defendant bank was not liable to the United States upon its guarantee of prior endorsements.

2. The district court erred in entering judgment for defendant bank.

3. The district court erred in holding that the "impostor rule" is applicable to the facts of this case.

Appellant hereby designates the following record to be printed in the above-entitled matter:

1. Complaint for money on forged checks (Treasury) filed August 25, 1955, including the check to the order of John E. Lewis which is part of Exhibit A to the complaint.

2. Answer of defendant, filed November 16, 1955.

3. Stipulation admitting facts and order, filed May 12, 1958.

4. Findings of fact, conclusions of law and judgment, filed June 3, 1958.

5. Notice of appeal, filed July 25, 1958.

Dated: This 8th day of September, 1958.

LAUGHLIN E. WATERS,

United States Attorney,

RICHARD A. LAVINE,

Assistant U. S. Attorney,

Chief, Civil Division.

/s/ BURTON C. JACOBSON,

Assistant U. S. Attorney,

Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 10, 1958. Paul P. O'Brien, Clerk.

